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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,231	01/04/2005	Andre Johan Taljaard	930092-2008	5104
7590 Ronald R Santucci Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151				
			EXAMINER MAL HAO D	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 04/10/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/520,231

Applicant(s)

TALJAARD, ANDRE JOHAN

Examiner

HAO D. MAI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,11-14,18,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5-7, 11-14, 18, and 22-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/21/2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 11 recites the limitation "a material used" (line 3 of claim 11), is unclear and should be reworded as "resilient deformable material.". Moreover, applicant should reword the language of the claims in a Markush format.
- Claim 22 recites "comprises of a *resiliently deformable arm which is attached to a base on one end of the arm* and has a tooth engaging portion attached to the other end of the arm". It is unclear what is attached to a base of the arm. Currently, it seems the arm is attaching to itself at a base at one end.

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-2, 5-7, 11-14, 18, and 22-23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Karasic (6,805,127) in view of Bertoch et al. (6,755,191).**

Regarding claim 1, Karasic discloses a device capable of retaining a medical tube, the device including: a first patient engaging portion (first mouthguard 14) configured to engage a zone of an upper jaw of a patient; and a second patient engaging portion (second mouthguard 24) configured to engage a zone of a lower jaw of the patient (Fig. 1). Both the first and second engaging portions 14, 24, each is being shaped in a form of a dental arch and having tooth engaging portions; and the two portions are being biased apart to provide a working gap between. The device further includes a medical tube guide means (tongue retractor holder 62), which is capable of holding a medical tube and is located in an airway of the patient. The medical tube guide means 62 is supportable on patient engaging portion 24 and located relative to the patient engaging portions such that in use the medical tube guide means is operatively positioned at the mouth of a patient in order to hold the medical tube as it exits the airway of the patient. Karasic discloses the invention substantially as claimed except for the securing means. Bertoch et al. disclose a clamp 20 (Figs. 1-3) operable between a securing and a releasing position. It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to modify Karasic by including a clamp such as that of Bertoch et al. in order to secure the medical tube against longitudinal displacement.

As to claim 2, Karasic discloses the mouthguards 14, 24 being made from elastomeric material, which are inherently resiliently deformable. **As to claims 5-7**, the medical tube guide means 62 is located towards a bottom side of the working gap and is sized to permit a view into the mouth of the patient through the working gap; it is also capable of immobilize the medical tube in a desired position. **As to claim 11**, Karasic discloses various embodiments for the fastener 12 which bias apart the first and second patient engaging portions; at least one of the fasteners shown in Fig. 4 is spring-loaded. **As to claims 12 and 14**, the medical tube guide means 62 includes a eye through which the medical tube to be guided can pass; and the first and second patient engaging portions includes portions configured to approximate a patient's bite size.

As to claim 13, Karasic does not disclose a slip resilient portion in the medical tube guide means. Bertoch et al. disclose that the inner surfaces of clamp 20 may be lined with a material having a high coefficient of friction such as rubber, or be formed with protuberances, ridges, grooves, etc. to improve the grip on a medical tube (column 4 lines 25-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Karasic by incorporate a slip resilient portion, such as lining the inner surface of the medical tube guide means 62 with a material having a high coefficient of friction in order to prevent slippage movement of the medical tube as explicitly taught by Bertoch et al.

Regarding claim 18, the method comprising the step of biasing a patient's teeth away from the medical tube while permitting the medical tube to be guided into the patient is naturally carried out when using the device disclosed by Karasic and Bertoch et al. as detailed above.

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Regarding claims 22-23, Karasic discloses all the limitations as claimed as detailed above with respect to claims 1 and 5. Particularly, the first and second patient engaging portions 14, 24, each comprises a resiliently deformable arm 34, 36, respectively. Each arm has a base (area near 12) attached at one end, and a tooth engaging portion attached at the other end.

Response to Arguments

6. Applicant's arguments directed to the combination of Moss in view of Bradley, have been fully considered but are moot in view of the new ground(s) of rejection necessitated by the newly made amendment(s) to the claims.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAO D. MAI whose telephone number is (571)270-3002. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Hao D Mai/
Examiner, Art Unit 3732

/DAVID ISABELLA/
Supervisory Patent Examiner, Art Unit 3774 for Cris Rodriguez/SPE, AU 3732